IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

WP(C).No. 31764 of 2005(F)

PETITIONER:

BAHULEYAN, THUNDIYIL HOUSE,
EZHUPUNNA, CHERTHALA.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:
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1. **THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G), ALAPPUZHA.**

2. **KUTHIATHODU RURAL HOUSING CO-OPERATIVE SOCIETY LTD.NO.692, KUTHIATHODU, CHERTHALA, REP. BY ITS SECRETARY.**

3. **EZHUPUNNA SERVICE CO-OPERATIVE BANK LTD NO.1124, CHERTHALA, REP. BY ITS SECRETARY.**

4. **ROCKEY ANTONY, VALIYAVEEDU, EZHUPUNNA SOUTH, ALAPPUZHA.**

5. **STATE OF KERALA, REP. BY THE SECRETARY TO GOVERNMENT, CO-OPERATION (C) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

BY ADV. SRI.P.N.MOHANAN FOR R2
SRI.R.RAJASEKHARAN PILLAI FOR R3
SMT.SABINA JAYAN
GOVT. PLEADER SRI.P.K.RAVIKRISHNAN R1 & R5

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE PHOTOCOPY OF THE NOTICE ISSUED BY JOINT REGISTRAR TO THE PETITIONER.**
EXT.P2	**TRUE PHOTOCOPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER TO THE JOINT REGISTRAR DTD. 20-12-04**
EXT.P3	**TRUE PHOTOCOPY OF THE CIRCULAR NO.17/04 DTD. 17/4/04 ISSUED BY REGISTRAR OF CO-OP. SOCIEITES**
EXT.P4	**TRUE PHOTOCOPY OF ORDER ISSUED BY JOINT REGISTRAR DTD. 5-1-05**
EXT.P5	**TRUE COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE RESPONDENTS DTD. 24-1-05**
EXT.P6	**TRUE COPY OF THE ORDER DTD. 18-10-05**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

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W.P.(c).No.31764 OF 2005

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Dated this the 6th day of November , 2007

JUDGMENT

Petitioner challenges Exts.P4 and P6. Ext.P4 is the order passed by the Joint Registrar disqualifying the petitioner under Rule 44(1) of the Co-operative Societies Rules on the ground that there is default in the account. This is confirmed in Ext.P6 appeal.

I heard learned counsel for the parties. Learned counsel for the petitioner submits that this is a case where no notice was received by the petitioner and unless notice is received by the petitioner, it cannot be said that petitioner is disqualified. Files were produced. The file produced evidences the receipt for issuance of notice by registered post to the petitioner. Petitioner contends on the strength of the Division Bench judgment in **Surendran Nair v. State of Kerala** (2004(1)KLT 407) that the law requires that defaulter should receive notice and be in default for a period of one month from the date of receipt of the notice. He also contends that in Ext.P6 the finding is entered by the appellate authority that the petitioner has admitted in the written statement that petitioner has received notice. He points out the

written statement produced as Ext.P2 and points out that there is absolutely no such statement by the petitioner in the written statement to the effect that he has received the notice.

Learned counsel for the respondent is not able to point out anything to the contrary. Therefore the finding that the petitioner has admitted in the written statement that he has received the notice is perverse. Counsel for the second respondent points out that in Ext.P4 Joint Registrar has found that notice was sent on 10/01/2004 and he also points out Section 104 to contend that it must be considered as notice being served. I would think that in the nature of the finding that is made by the appellate authority which no doubt also found that the Joint Registrar was convinced that registered notice was sent to the appellant, the appeal of the petitioner requires re-consideration and a decision taken in accordance with law with opportunity to the parties. Accordingly, I quash Ext.P6 and direct the 5th respondent to consider the matter afresh and take a decision in accordance with law with notice to the petitioner and respondents 2 to 4 within a period of one month from the date of receipt of a copy of this judgment.

(K.M.JOSEPH, JUDGE)

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